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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/596,583

11/12/2007

Enrique Nieves-Vazquez

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EXAMINER

SOOHOO, TONY GLEN

ART UNIT

PAPER NUMBER

1774

NOTIFICATION DATE

DELIVERY MODE

01/05/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pto-sl@huschblackwell.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/596,583	<b>Applicant(s)</b> NIEVES-VAZQUEZ, ENRIQUE	
	<b>Examiner</b> Tony G. Soohoo	<b>Art Unit</b> 1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,12,15,17 and 18 is/are rejected.
- 7) ☒ Claim(s) 7-11,13,14 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

Art Unit: 1774

**DETAILED ACTION****Claim interpretation**

1. Regarding to the intended use of the device with powders, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

2. Note: The MPEP states  
MPEP 2114

**MANNER OF OPERATING THE DEVICE DOES NOT DIFFERENTIATE APPARATUS CLAIM FROM THE PRIOR ART**

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (The preamble of claim 1 recited that the apparatus was "for mixing flowing developer material" and the body of the claim recited "means for mixing ..., said mixing means being stationary and completely submerged in the developer material". The claim was rejected over a reference which taught all the structural limitations of the claim for the intended use of mixing flowing developer. However, the mixer was only partially submerged in the developer material. The Board held that the amount of submersion is immaterial to the structure of the mixer and thus the claim was properly rejected.).

MPEP 2115

**Material or Article Worked Upon by Apparatus  
MATERIAL OR ARTICLE WORKED UPON DOES NOT LIMIT APPARATUS CLAIMS**

"Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims." In re Young, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)). In In re Young, a claim to a machine for making concrete beams included a limitation to the concrete reinforced members made by the machine as well as the structural elements of the machine itself. The court held that the inclusion of the article formed within the body of the claim did not, without more, make the claim patentable. In In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967), an apparatus claim recited "[a] taping machine comprising a supporting structure, a brush attached to said supporting structure, said brush being formed with projecting bristles which terminate in free ends to collectively define a surface to which adhesive tape will detachably adhere, and means for providing relative motion between said brush and said supporting structure while said adhesive tape is adhered to said surface." An obviousness rejection was made over a reference to Kienzle which taught a machine for perforating sheets. The court upheld the rejection stating that "the references in claim 1 to adhesive tape handling do not expressly or impliedly require any particular structure in addition to that of Kienzle." The perforating device had the structure of the taping device as claimed, the difference was in the use of the device, and "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself." Note that this line of cases is limited to claims directed to machinery which works upon an article or material in its intended use. It does not apply to product claims or kit claims (i.e., claims directed to a plurality of articles grouped together as a kit).

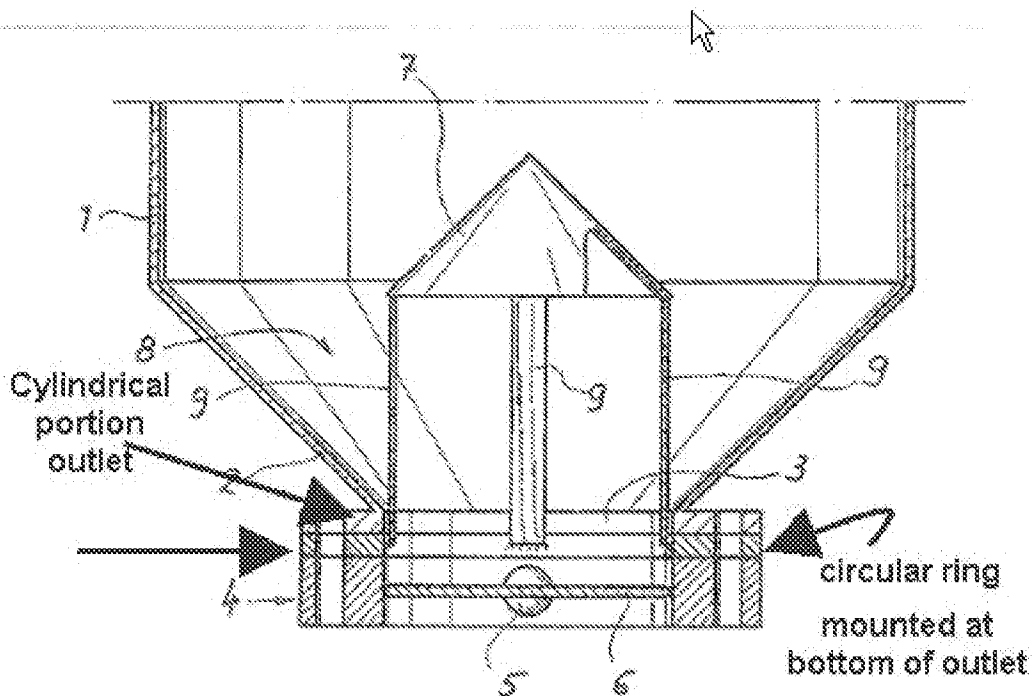
***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 12 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 85 13 987 (cited as a “x” reference in the EP supplemental search report).



The DE reference shows a hopper 1; lower outlet 3 at bottom of 2 and at 4; a flow controller including a conical deflector 7 being carried by an upper end of a support structure with spaced legs 9, 9, 9; a mounting portion ring (see markup) in contact with

Art Unit: 1774

the bottom of the outlet cylindrical portion; a frusto conical portion 2 which narrows from 1 to outlet 3.

Regarding claim 12 note that the legs 9 are spaced about 3.

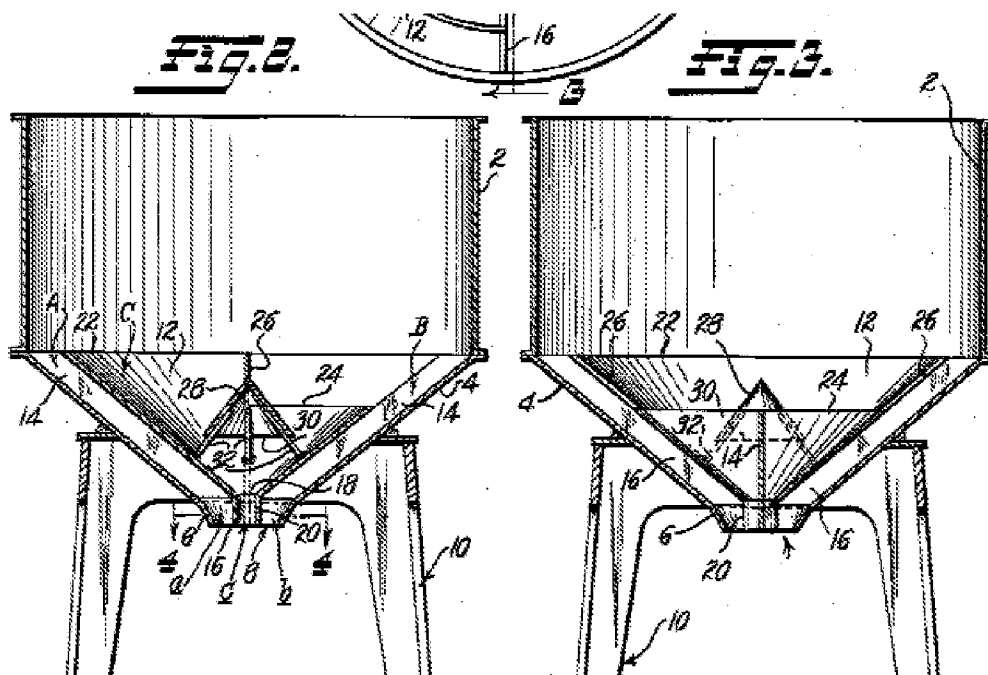
Regarding claim 17 note that the conical deflector upward portion is a face the solid conical surface.

3. Claims 1-4, 12 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Matthews 2994460 (cited by examiner).

The Matthews reference shows a hopper 2; lower outlet C (underlined, fig 2) at bottom; a flow controller including a conical deflector 28 being carried by an upper end of a support structure with spaced legs 32, 32, 32; a mounting portion at the lower connection point of 32 ; a frusto conical portion 12 which narrows to the outlet.

Regarding claim 12 note that the legs 32, 32, 32 are spaced about 3 and line as an incline and along toward the conical surface.

Regarding claim 17 note that the conical deflector upward portion is a face the solid conical surface.



***Claim Rejections - 35 USC § 103***

4. Claims 5-6, 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 85 13 987 (cited as a "x" reference in the EP supplemental search report).

The DE reference discloses all of the recited subject matter as established above and as recited in the claims. The DE reference, however, is silent as to the dimension of the elevation of the apex of the deflector within the hopper being not greater than 25% of the frusto-conical section's height. Absent any unexpected result, it would have been an obvious matter of design choice to alter the size of the height of the cone apex relative to the hopper so as to provide a greater or lesser flow through via a frictional throttling of the flow due to the angle of the surface friction and length height of the deflector surface component, since such a modification would have involved a mere

Art Unit: 1774

change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). (claim 5-6).

Regarding claims 15, the DE reference shows the legs 9 attached to a circular ring (see the sandwiched section attached to the bottom of the outlet in the markup above). The reference is silent as to the sandwiched portion being fixedly attached or removable from the hopper outlet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the mounting portion circular ring detachable from the bottom of the outlet so as to provide an easy manner to repair/replace a damaged or dented deflector, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Regarding claim 18, The DE reference discloses all of the recited subject matter as established above and as recited in the claims. The DE reference, however, is silent as to the further provision of a movable frame to receive powder material from the outlet. The DE reference teaches a device to dispense material from the hopper but however is silent as to what happens to the material when it leaves the outlet. A person of ordinary skill and common knowledge in the art of dispensing of material would understand that if a hopper outlet was not provided with a frame/tray to hold the dispensed material, it would fall to the floor/ground. Thereby making it hard to transport the material to another place, or contaminate the dispensed material since it may touch the dirty ground/floor. The objects of trays (trays have a frame defining a volume) are

Art Unit: 1774

notoriously known to be used to hold material. Thus, it would have been obvious to provide for the DE device with a tray frame to receive the dispensed material so it may be more easily moved to another place and to prevent contamination of the material (if it were to touch the floor).

### ***Allowable Subject Matter***

5. Claims 7-11, 13-14, and 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US patent nos. : US1047316, US 1218250, US 1383921, US 2593425, US 20080259721, US 3124170, US 3336006, US 3804303, US 4194845, US 4282989, US 4286883, US 4342532, US 4353652, US 4448540, US 4539782, US 4632565, US 4822173, US 4923304, US 5248197, US 6493605.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM, Tues-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 1774

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tony G Soohoo/  
Primary Examiner, Art Unit 1774

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Primary Examiner  
Art Unit 1774